

EXHIBIT D

Part 2 of 2

to

Declaration of Andrew Prins

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Transcript of Randall Snyder

Conducted on December 18, 2018

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1 mismatch. So we're only looking at very distinct
2 mismatches. We're not looking if they have the same
3 last name or the same first name or Bill or Wil or
4 those types of things. We're trying to eliminate and
5 be conservative about that. So we get a clear
6 mismatch in the name. So it really does indicate
7 with a high degree of confidence that the wrong
8 number was called.

9 Q. I'm sorry. I have to unpack that a little
10 bit.

11 A. Okay.

12 Q. Let's say that Time Warner Cable called its
13 customer on January 1st, 2017. Okay? And its
14 customer was Bob Smith. That's what it says on the
15 call log. We called Bob Smith, January 1st, 2017.
16 And then let's say we called the customer again on
17 March 15th, 2018. We still think it's Bob Smith.

18 I believe what you were saying is that
19 through Lexus Nexus, if Bob Smith had relinquished
20 his phone at some time between January 1st, 2017 and
21 March 15th, 2018, Lexus Nexus would tell us there's a
22 different customary user associated with the phone at
23 the time of the March 15 call; right?

24 A. Yes.

25 Q. And would Bob Smith still be reported in

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1 Lexus Nexus as a customary user of the phone, or
2 would the new owner be reported as the customary user
3 of the phone?

4 A. You can do ranges of dates and request data
5 of certain periods of time. The issue here is, when
6 did -- the actual person that was called after the
7 number was relinquished by Bob Smith, when did that
8 person start getting called, and you look up that
9 date with that phone number. And if on that date the
10 first time that person was called, that was the wrong
11 number, shows up as a different person, then you know
12 there was a wrong number called.

13 Perhaps if you went before the date that the
14 person was originally called, which is not really a
15 part of this case because they wouldn't have received
16 a call, so there would be no action. Sometime before
17 that, you'll get a hit on Bob Smith or the new person
18 or even somebody in between and the number could have
19 been relinquished three times. So the idea is that
20 you put the phone number in with the date, the first
21 date the call was made, to a putative class member
22 that is potentially a wrong number call and see if
23 that mismatches from the account information.

24 Q. Just to be clear. So let's go back to our
25 March 15, 2018 call. We thought we were calling Bob

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1 Smith, but we know that it was actually Jane Howard
2 that had the phone at that time. Okay? Would
3 Lexus -- if we gave it the March 15 date or the phone
4 number, would it tell us that Jane Howard was the
5 customary user of the phone at that time and would
6 Jane Howard be the only customary user at that time?

7 A. Yes. And not just only. It just matters if
8 it was a different user. And if the phone number was
9 associated and was used by a person after Bob Smith
10 relinquished it, a wrong number call was made.

11 Q. And how does Lexus know that Bob Smith
12 relinquished it?

13 A. They don't. They'll have previous data for
14 previous dates, if you request it, that's associated
15 with Bob Smith.

16 Q. Uh-huh.

17 A. And at some later date, it's associated with
18 another person. So you can again, if it was
19 required -- and I don't think it is -- but if you
20 wanted to do a lookup through Lexus Nexus and provide
21 the last time Bob Smith was called accurately, and
22 the next time a call was attempted to him, which was
23 a year later, and it was a different person, you'll
24 get two pieces of data and you'll get dates
25 associated with them. And you know that something

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1 happened with that number, between the original
2 accountholder and the user of that number and the
3 wrong number that was called. So you know that the
4 number changed hands at some point.

5 Q. So I think you acknowledged earlier that
6 it's possible, although perhaps rare, that there
7 would be multiple users associated with a phone
8 number of Lexus at a particular time; is that right?

9 A. That's right. But if you -- again, if you
10 request that data from Lexus Nexus, you'll get
11 multiple hits with multiple names. And if one --
12 let's say he comes back with five pieces of data and
13 one of them is actually the accountholder on that
14 date, but there is other names associated with that
15 number, too, we eliminate that from the class. We
16 just say he's not a class member, because it looks
17 like there were multiple users of the phone and one
18 was the accountholder, we're actually trying to call
19 the accountholder, and that was legitimate.

20 So that's the idea, is that we look for true
21 mismatches that are a mismatch across the board. If
22 you get a hit that's a similar name to an
23 accountholder, we eliminate that from the class.

24 Q. Do you know whether cable companies provide
25 underlying data sources to services like Lexus Nexus

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1 and TranUnion?

2 A. Um, I know that those data processors
3 advertise that -- or claim or assert, that one of
4 their sources of data is utilities. So the extent
5 that a cable service can be considered a utility,
6 just like electric or water, I believe that they can
7 obtain some of that data, if not all of it.

8 And I don't -- I'm not an expert in the
9 privacy laws of individual states and all that stuff,
10 of how much data can be obtained that isn't an
11 intrusion on some privacy regulation. But I know
12 that they advertise utilities, and, you know, a cable
13 company may be, one of them, or may not be.

14 Q. Are you aware of -- strike that.

15 Do you know whether Lexus has the ability to
16 determine who actually answered a particular phone
17 call?

18 A. No. There's no way to know that unless
19 there's eye witnesses or a recording or something
20 like that, of the person physically in realtime
21 answering the phone call. There's no --

22 Q. It's just impossible --

23 A. There's no independent observation of that,
24 no. But my understanding, also, is that, you know,
25 wrong number calls aren't predicated upon who

1 answered. It depends on whether you called the wrong
2 number or not.

3 Q. Do you know whether Mr. Weir took any steps
4 to clean or manipulate the data that was provided by
5 the defendant, or would that be a question for
6 Mr. Weir?

7 A. It would be a better question for him. I
8 don't have his declaration in front of me. I can
9 only attest to the methodology I'm familiar with and
10 what he's testified to and -- when I've just worked
11 with him in the past anecdotally. But certainly
12 those kind of questions are more appropriate for him.

13 Q. So I believe you testified that your
14 methodology, as executed by Mr. Weir, accounts for
15 variations in name. Was that right?

16 A. Yes.

17 Q. Can you tell me how it does that?

18 A. Yeah, he uses a couple of different software
19 products. I don't know the names offhand, but he can
20 testify to that. That like this similarity scoring
21 among data, that give you a probability of a match or
22 mismatch.

23 So, for instance, if you run a lot of data
24 through the software, it may result and kick out
25 10 percent of the data as being a mismatch or being a

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1 A. A lot of this looks like it mimics the call
2 log records that were produced and that he's added
3 additional information to those call logs based on
4 his analysis. So I don't -- some of them are easy.
5 Obviously, these calls are outbound collection calls,
6 so they are outbound calls. That's what that means.

7 You have columns like "File ID" and "UC ID,"
8 those are internal designations that I don't know
9 what they mean.

10 Q. Do you know what the column, "Result ID,"
11 means? That's Column L.

12 A. Thank you.

13 I don't offhand, without looking at the
14 other evidence again.

15 Q. Do you know what that column, "Duplicate
16 Checks," means? That's Column O.

17 A. No. Those values don't make sense to me
18 under duplicate checks.

19 Q. Do you know what "Call Date" means in Column
20 P?

21 A. Yeah. My understanding is that's the date
22 the call was made.

23 Q. Do you know what "Date first" means in
24 Column Q?

25 A. That's probably account record information

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1 from the first date of -- or when that account was
2 established.

3 Q. With Time Warner Cable?

4 A. With Time Warner Cable.

5 Q. Do you know what Column R, "Match," means?

6 A. Yeah. I think that's -- that might be --
7 match, match. I don't know what all of these columns
8 specifically are, but it's probably -- that's
9 something Colin put together to see if there was a
10 match or not in -- when he looked up the number so
11 that a match would mean it's not part of the class, I
12 think, in this case.

13 But I'm not sure. You'd have to ask him
14 about each individual column and the details of it.

15 Q. Do you know what "Straight mismatch," that's
16 Column S is?

17 A. No.

18 Q. Do you know what "Maxmatch first," is,
19 Column T?

20 A. No.

21 Q. Do you know what "Max mismatch first,"
22 Column U is?

23 A. No.

24 Q. "Date mismatch," Column V?

25 A. No.

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1 Q. "Call mismatch," Column W?

2 A. No.

3 Q. "Total mismatch," Column X?

4 A. No.

5 Q. "First AM," Column Y?

6 A. No.

7 Q. How about "Single call," Column Z?

8 A. No. Again, this is, you know, his analysis,
9 and I opine on the methodology and I looked at his
10 summary results in his report, but the individual
11 internal details of everything is really in his value
12 book. It's not something I analyzed.

13 MR. PRINS: Sorry for boring you, Josh.

14 BY MR. PRINS:

15 Q. I'd like to go back to the name-matching
16 process that Mr. Weir used. Are you familiar -- I'm
17 you did not review the parameters and you don't know
18 the particular program he used, but are you familiar
19 generally with the sorts of inconsistencies that he
20 would have determined result in a match versus a
21 nonmatch?

22 A. Generally he gives examples of that in his
23 report.

24 Q. And what is your understanding of what he
25 did?

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1 A. Again, issues like Bob versus Robert in a
2 name or Bill versus William, or determining if first
3 names were the same, but maybe a maiden name changed
4 to a married name.

5 And my understanding is -- and I would
6 always recommend this in using this methodology --
7 that you be very conservative. So even if it even
8 looks close like that -- and that's why I use the
9 software because it gives you a probability score of
10 whether multiple pieces of data match. So that's the
11 type of -- those are examples he gives, I believe.

12 Q. So the maiden name ones, would that be a
13 situation where, you know, our call log record might
14 say we were calling Jane Smith but Lexus is reporting
15 the customer user is Jane Howard?

16 A. And maybe it has the same address, also, as
17 the account. So then you have a pretty good
18 indication that that person was the actual right
19 person that was called.

20 Q. Just so I understand. So if Lexus is
21 reporting that the user, the customer user of the
22 phone, has the same address as our customer's
23 address, you think it's pretty likely we were calling
24 the right person?

25 A. Generally, yes. That's one of the pieces of

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1 number call.

2 And looking at this Exhibit 3, do you see
3 where it says customer name is [REDACTED].

4 A. Yes.

5 Q. And do you see where it says the call date
6 is 12/29/2016?

7 A. Yes.

8 Q. If on March 5th, 2017, somebody by the name
9 of [REDACTED] walked in to Bank of America and
10 opened an account with the phone number [REDACTED]
11 which you see identified in Column F; correct?

12 A. Yes.

13 Q. Would you agree that it's likely that this
14 was not a wrong number call?

15 A. Well, there is other data in here. And
16 again, I am not an expert in his analysis and how he
17 labeled everything, but Column U says, "Max mismatch
18 first."

19 It appears to me that the number changed
20 possibly in 2014. So any call after that date would
21 have been a wrong-number call, regardless of if
22 somebody accidentally used somebody else's phone number
23 at some point in time.

24 Q. So let me give you some clear assumptions
25 just so that we're on the same page. So just assume

1 can always think up. But that's not what his
2 statistical analysis is based on and that's not what
3 this analysis is based on.

4 And I think, even if we get this right, a
5 very large -- most of the time in the vast majority
6 of the cases that we're looking for for the class
7 members, if we miss one or capture one that shouldn't
8 be in there, again, it's not my understanding it's a
9 requirement that this has to be a hundred percent
10 accurate without one anomalous piece of data.

11 Q. What percentage accuracy do you think your
12 methodology has produced?

13 A. All I could say is a vast. I mean, I don't
14 know an exact percentage. And all I can tell you is
15 that, testifying in the past and being involved in
16 class action cases with many, many more records than
17 are here, that, given the same answers and the
18 understanding that these hypothetical anomalous
19 situations, anybody can make up, there's certainly no
20 evidence for those things, however, nothing is a
21 hundred percent perfect. Absolutely nothing. And my
22 understanding is that this doesn't have to be.

23 Q. If your methodology was 90 percent accurate,
24 would you still consider it a reliable methodology?

25 A. Yes. I would consider reliable if it's over

1 50 percent, but in my experience it's more than that.

2 Q. So an error rate, your methodology would
3 still be reliable, in your view, if its error rate
4 was 50 percent?

5 A. Well, I shouldn't say it so flippantly like
6 that. My experience has been that this is somewhere
7 between 90 and a hundred percent. I have seen
8 testimony in other cases, not by Colin but from other
9 people that do his work, of a 93 to 95 percent
10 accuracy rate in getting the correct data.

11 The fact that there's 4 or 5 percent, and we
12 can think of these bizarre hypothetical situations
13 that are included in that 4 or 5 percent, it doesn't
14 impact my opinion at all.

15 So those are the numbers that I've seen
16 testified to using this methodology. The same
17 methodology is used across the industry. So I don't
18 know what the court accepts as reliable or not,
19 that's for them to decide. But my experience has
20 been with the data analysts that do -- that actually
21 perform this work, they claim a very, very high
22 percentage of accuracy.

23 Q. You've opined in this case that the
24 methodology is accurate; correct?

25 A. Yes.

1 Q. And what I'm asking you, sir, is what is
2 your threshold for reliability?

3 A. I don't have a specific statistic. However,
4 in my appearance, I have seen this methodology
5 testified to in written testimony, depositions and
6 trial that this is well above 90 percent accurate.

7 Again, the fact that we can come up with
8 hypothetical situations, it has not been my
9 experience that those unrealistic hypothetical
10 situations make up the majority of this data. The
11 fact that you could find a mistake or two, doesn't
12 change my opinion on the reliability.

13 Q. Understanding that a mistake or two doesn't
14 change your impact about its reliability, that's not
15 the question I'm asking, sir. The question I'm
16 asking is, you have testified that this methodology
17 is reliable. And what is your criteria for
18 determining reliability?

19 MR. ARISHON: Objection. Asked and
20 answered.

21 THE WITNESS: Experience with this method.
22 The fact that it's been deemed reliable by courts
23 around the country. I don't have a particular
24 statistic in mind. And I don't know that you could
25 actually get a very good statistic unless you queried

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1 the class action administrators themselves, over 90
2 percent accurate.

3 Again, just because we can think of a
4 hypothetical in one circumstance where this
5 methodology doesn't work, that that somehow means
6 that it doesn't work for everybody or that that's
7 kind of the majority or that's the norm, no, that's
8 not what I'm saying. This methodology is going to
9 capture the great majority of truly wrong-number
10 calls. I'm convinced of that.

11 BY MR. PRINS:

12 Q. But you can't put a number on what that
13 means?

14 A. No. But the fact that I can't put a
15 statistical number on it, it doesn't change the fact
16 that this works to my opinion, and it's been
17 empirically shown to be true. We're not making this
18 stuff up out of nowhere. This is a methodology
19 that's been used for many years in many class
20 actions, and it's been empirically shown to be true
21 and accepted by the courts.

22 MR. ARISHON: Is this a good time for a
23 break?

24 MR. PRINS: What are you guys thinking in
25 terms of food?

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1 Q. And what's the title of that table?

2 A. "Illustrative Examples of the Matching
3 Process."

4 Q. And could you tell me what the header "Call
5 Date" means to you?

6 A. That appears to be the date in the call log
7 records that a prerecorded call was made from Time
8 Warner.

9 Q. And what about the field telephone number?

10 A. That appears to be the telephone number that
11 was called.

12 Q. And what about the header, "TWC Customer
13 Name"?

14 A. That is the account holder's name for Time
15 Warner.

16 Q. And what is Lexis customer name?

17 A. That is the customer name they got back from
18 Lexis Nexus.

19 Q. In other words, the customary user of the
20 phone?

21 A. Yes, based on data they requested, they got
22 a name back for that telephone number.

23 Q. And what does Lexis first seen date mean in
24 the next column over?

25 A. I'm not sure of that. That may be the first

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1 time or the first piece of data that Lexus collected
2 regarding this phone number.

3 Q. But you're not sure.

4 A. I'm not sure.

5 Q. We would have to talk to Mr. Weir about
6 that?

7 A. Yes. This is his report; so he can speak to
8 that in much more detail than I can.

9 Q. What does the header "Match" mean?

10 A. Whether we considered in the methodology a
11 name that was obtained from Lexus Nexus as a data
12 processor matched -- or reasonably matched the
13 accountholder's name such that it was not a
14 wrong-number call.

15 Q. So if a match is equal to yes, according to
16 the methodology, it was not a wrong-number call; is
17 that correct?

18 A. Correct.

19 Q. And if the match is a no, according to the
20 methodology, it is a wrong-number call; is that
21 correct?

22 A. Correct.

23 Q. And just looking through this table, the
24 first row, it has TW customer name, [REDACTED],
25 Lexus customer name [REDACTED] and a match yes.

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1 And that means that this was a right-number call to
2 [REDACTED].

3 A. Yes.

4 Q. And that second row has a call date of
5 January 12th, 2017, we have a TWC customer name of
6 [REDACTED], a Lexus customer name of [REDACTED]
7 [REDACTED] and a match of yes. Did I read that
8 correct?

9 A. Yes.

10 Q. And that means, according to the
11 methodology, this was a correct-number call.
12 Correct?

13 A. Correct.

14 Q. Next line, May 11th, 2018, we have a another
15 TWC customer entry of [REDACTED], but this time,
16 Lexus customer name is showing up as [REDACTED];
17 is that right?

18 A. Yes.

19 Q. And we have a match of no. What is this
20 line telling us?

21 A. That the call that was made intended for
22 [REDACTED] on May 11th, 2018, actually went to
23 [REDACTED], who now had that number. And the
24 first time that this information appeared in Lexus
25 Nexus's data was in February 2017. So apparently, at

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1 person on May 11th, 2018, well over a year later, but
2 the data shows that sometime between January 12th,
3 2017 and February 6th, 2017, [REDACTED] no longer
4 used that number and now [REDACTED] it using that
5 number, and therefore, it was a wrong-number call.

6 Q. So at the time of this May 11th, 2018 call,
7 [REDACTED] was no longer associated with this
8 phone number. Is that a fair statement?

9 A. Yes.

10 Q. And then on the next line we have this
11 December 4th, 2014 call to [REDACTED]. That's
12 the TWC customer name. Did I read that correctly?

13 A. Yes.

14 Q. And then we have a Lexus customer name of
15 [REDACTED] and a Lexus first seen date of
16 January 1, 1994, and a match set to yes. Did I read
17 all that correctly?

18 A. Yes.

19 Q. And what is that row telling us?

20 A. That's saying at the time they made the
21 call, the accountholder that was a customer user of
22 that number was still the customer user of that
23 number.

24 Q. And going down to the next row, we have a
25 call date of February 8th, 2018, a TCW name of

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1 Q. And do you agree that these are illustrative
2 examples of the methodology you have proposed and
3 Colin Weir has implemented?

4 A. Well, this is Colin Weir's wording. I take
5 his wording at face value. It says, "Illustrative
6 examples." So it must be illustrative examples,
7 that's not an opinion of mine. And, yeah, this is
8 using the technology -- the methodology and the
9 technology I described in my report.

10 Q. Have you reviewed the Lexus data underlying
11 this table 1?

12 A. No.

13 Q. In fact, I believe you testified earlier
14 that you were haven't reviewed any Lexus data in
15 connection with this case, correct?

16 A. That's right. It was Colin Weir's task.
17 I'm only opining on the overall methodology.

18 Q. Have you ever reviewed the output data from
19 the Lexus Nexus product that Mr. Weir used in any
20 case?

21 A. Again, and you asked me that earlier today.
22 No.

23 Q. Let's circle back to the third row, [REDACTED]
24 [REDACTED] and [REDACTED]. Do you know if Mr. Weir
25 has done anything to confirm whether or not there was

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1 people.

2 BY MR. PRINS:

3 Q. Other than considering situations where the
4 last name of the TWC customer and the Lexus customer
5 are the same, does the methodology do anything else
6 to account for whether or not the TWC customer name
7 and the Lexus customer name are married?

8 A. Are married? No. It accounts for
9 misspellings, again, nicknames for formal names,
10 those types of things. There's no way to tell the
11 relationship.

12 But what I can tell you, if [REDACTED]
13 was called, it was a different person than [REDACTED]
14 [REDACTED] regardless of their relationship, and the
15 wrong number was called, the wrong person that is not
16 the accountholder, was called. It was the wrong
17 number. They had the right number, wrong person.
18 That's what a wrong number is.

19 Q. And that would be true even if this said
20 [REDACTED] instead of [REDACTED]; right?

21 A. That may well be true, and for us, again, to
22 be conservative, we're not including that in the
23 class.

24 Q. Do you know if Mr. Weir discarded any of the
25 results that were returned by Lexus?

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1 A. I can't -- I can't -- I don't know anything
2 about Mr. Weir except what he wrote in this report;
3 so I can't guess. I can't testify about what he did
4 or didn't do.

5 Q. Can you please pull back up Exhibit 1, which
6 is your report in this matter; is that correct?

7 A. Yes.

8 Q. I'd like you to turn to paragraph 14. It's
9 on page 5. Are you there?

10 A. Yes.

11 Q. And the first sentence reads:

12 "In my experience, call logs obtained from
13 IBR systems that include thorough details of each
14 outbound call made, such as in this case, are highly
15 reliable and accurate."

16 Is that correct?

17 A. Yes.

18 Q. And you stand by that opinion today?

19 A. Yes.

20 Q. And so there's a couple of compound words in
21 this sentence; so I just want to be clear. Are you
22 opining that IBR records in general are highly
23 reliable and accurate, that both records in general
24 and Time Warner's records are highly reliable and
25 accurate, or that just Time Warner's records are

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1 highly reliable and accurate or something else?

2 MR. ARISHON: Object to form.

3 THE WITNESS: In my experience, I have never
4 seen call log records or call detail records that are
5 logged in software, into a database, after the call
6 processing is performed and the duration of the call
7 is over, a inaccurate recording of that data. I've
8 never seen that ever.

9 I don't -- is it possible that something
10 bizarre happens somewhere, again, a weird
11 hypothetical of one in a bizillion chance? Yeah, I
12 can't testify to everything at all. But I'm
13 convinced that the call log data is accurate in this
14 case and overall with dialing systems and interactive
15 voice responses.

16 BY MR. PRINS:

17 Q. Just to be clear. It's your testimony that
18 the IBR logs that you have reviewed in this case are
19 highly reliable and accurate; correct?

20 A. Yes.

21 Q. What is the basis for that opinion?

22 A. As I just explained, the call recording and
23 the information about the call is logged in a
24 database after the communications event occurs and
25 after it's finished. So all the data about that call

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1 programmed to listen to the prompts of the dual-tone,
2 multifrequency buttons on your phone to determine
3 what to do with the call. So press 1 to talk to a
4 customer representative. Press 2 for billing
5 information, et cetera. So it's interactive in that
6 sense and it can be tied to other computer systems.

7 But the point is that it's an automated
8 system that's designed to, when an outbound call is
9 initiated, to be played, a recording to be played, or
10 when an inbound call comes in, the computer answers
11 the call with the voice system.

12 Q. And do you know, is there one company that
13 makes the IVR or are there many companies that make
14 IVRs, or how does that work?

15 A. Many. There is many, many.

16 Q. How many manufacturers of IVRs would you say
17 there are in your experience?

18 A. I don't know. Dozens and dozens.

19 Q. And what IVR software does Time Warner Cable
20 use?

21 A. I don't know.

22 Q. Have you inspected the IVR platform that
23 Time Warner uses?

24 A. No.

25 Q. Do you know how the IVR system that Time

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1 somebody says hello?

2 A. Before. And also before someone says hello
3 or knows the phone is ringing, the call is blocked,
4 and therefore, you don't get an alert from your phone
5 that a call came in.

6 Q. And so why would -- if that happened, if in
7 this case we called and the call was blocked before
8 somebody said hello, why would Charter's IVR think
9 that was a live voice?

10 A. Oh, it could be many reasons. It could be
11 that it's programmed specifically for call blocking,
12 such that you know that when it receives a signal
13 that there was an intent to hang up and it was
14 blocked based on the call-blocking software, it
15 simply left. It was programmed to this leave this
16 disposition in that situation.

17 Certainly, if a call is completed and
18 there's nothing else involved in the call, even if
19 you just manually dialed somebody and they had
20 call-blocking software, it would probably be recorded
21 as live voice. That's just the default. There's no
22 assumption here that anything else answers besides a
23 person, and this is computer systems and software
24 that determine whether it's an answering machine or
25 fax tones or those types of things.

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Conducted on December 18, 2018

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1 So the kind of call analysis that goes on
2 is, it believes it's a live voice, but when it's
3 instantly hung up or it's instantly blocked, it has
4 no other indications.

5 I mean, this is most likely what happens in
6 this case. The issue is that even if the attempt
7 status said answering machine, there would be a zero
8 duration of the call. So it really doesn't matter
9 which indication it puts here in this case, the call
10 was answered and nothing else happened after it was
11 answered. Then the call was terminated instantly.

12 Q. And do you know how Time Warner Cable's IVR
13 is configured to deal with call-blocking
14 applications?

15 A. Based on this hard evidence here, it's
16 designed to leave a live voice attempt status
17 probably with a call duration of zero.

18 Q. But you're not basing that opinion on
19 anything other than this Exhibit 5; right?

20 A. Unless you gave me a false exhibit of
21 erroneous data that you know is erroneous, this is
22 hard evidence that that is exactly how it's
23 programmed.

24 Q. And because that blocked call would have
25 been disconnected before anything else happened on

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1 the phone, no artificial or prerecorded voice would
2 have played on that call; correct?

3 A. That's right.

4 Q. And do you know how often this happens in
5 Charter's IVR records, where blocked calls are being
6 reported as live voice?

7 A. No.

8 Q. You haven't done anything to analyze that;
9 correct?

10 A. No.

11 Q. Because you weren't asked to?

12 A. I wasn't asked to. And I leave it up to
13 Colin Weir to do the analysis of the call records and
14 I assume he wasn't asked to either.

15 Q. Is it your experience that IVR systems -- is
16 it typically one piece of software in the IVR system
17 or is it multiple pieces of software?

18 A. It replicated software. This is a realtime
19 communication system and it's a one process, one
20 function. You can make multiple calls
21 simultaneously, play the same simultaneously over
22 multiple processes, or remote multiple -- depending
23 on if the system is a voice over IP system or it's a
24 traditional trunk lines and channels. These systems
25 are designed not to be single-threaded so it's one

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1 call at a time doing one thing at what time, they'd
2 be very slow and inefficient.

3 So you can do multiple calls at a time, run
4 multiple campaigns at a time, leave different
5 messages under different campaigns, et cetera.

6 Q. Do you know whether Time Warner Cable's IVR
7 systems uses a traditional trunk configuration or a
8 voice over IP configuration?

9 A. No. It's really immaterial to the issue.

10 Q. Do you know whether Time Warner Cable has
11 used the same IVR software from today back through
12 2013?

13 A. No.

14 Q. Because you haven't --

15 A. I haven't looked at that. But, again, this
16 is forensic evidence, and if the call records show an
17 IRV was used, I'm not sure if it matters which system
18 was used, if they swapped out a system or bought a
19 new one, et cetera. But the call logs clearly show
20 that an IVR was used to make these calls.

21 Q. Would you agree that the algorithms used for
22 detecting whether something is a live voice differ in
23 some respect between the various manufacturers of IVR
24 systems; correct?

25 A. Yeah. Some advertise, you know, better than

1 producing erroneous data, but in my mind, this is all
2 very accurate. There's no reason to think it isn't.

3 Q. And you're basing that solely on your review
4 of David Zitko's deposition transcripts and your
5 general experience with IVR's; is that right?

6 A. Yeah, and 35 years of call processing,
7 understanding technology and expertise and knowledge,
8 yes. To tell me -- or to come up with some
9 hypothetical where what you presented me is a hundred
10 percent false and then have me come to the conclusion
11 that this is erroneous data, it's just silly to me.
12 I don't understand it.

13 Q. Are call dispositions usually recorded in a
14 database?

15 A. Yes.

16 Q. What database software does Time Warner
17 Cable use?

18 A. It doesn't matter. Usually these dialing
19 systems have internal databases and they probably use
20 Microsoft SQL or Oracle. Those are the two most
21 popular, large databases, but there are others
22 around. The manufactured database software is
23 inconsequential to the fact that the data was stored
24 there and accurately reported on.

25 Q. So you don't know what database software

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1 Time Warner Cable uses?

2 A. That's right. And it doesn't matter either.

3 Q. How many pieces of software are involved in
4 time warper Cable's IVR process between when the call
5 is detected and the disposition is generated and when
6 that is actually logged into a database?

7 A. I have no idea. And I don't even know what
8 a piece of software means. I could tell you what
9 functions are in software and how they're developed
10 and the processes that are run. Probably hundreds or
11 thousands. But that's specific to the manufacturer
12 of the software and proprietary.

13 Q. And you have no idea what functions or
14 software Time Warner Cable is using; correct?

15 A. From a functional standpoint, I know exactly
16 what functions they are performing. They're using
17 call progress analysis; they are using a database
18 storage; they're using the automatic playing of
19 prerecorded voice message based on program
20 dispositions for a given campaign. I can tell you
21 all kinds of functionality in the software.

22 Those other details of what function talks
23 to what function at a low level of software, is
24 irrelevant to my opinions of functionality here and
25 that these records must be accurate.

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1 A. No.

2 Q. Has the court ever criticized you for
3 opining on the technical configuration of a dialing
4 system without having analyzed it?

5 A. You mean inspected it?

6 Q. Inspected it.

7 A. Twice out of 300 cases.

8 Q. And were you disqualified in those cases?

9 A. No. I've had testimony stricken. Not
10 disqualified as an expert.

11 Q. In which cases did you have your testimony
12 stricken?

13 A. Leg versus Voice Media; Dominguez versus
14 Yahoo; and CBA versus Marshall.

15 Q. Is that the three cases?

16 A. Those are the three that I'm aware of. I
17 was on other cases where the court disagreed with my
18 opinion but didn't strike testimony. But I also have
19 dozens and dozens of court opinions that have said
20 the exact opposite or the same type of analysis.

21 Q. Other than reviewing Mr. Zitko's deposition
22 transcripts and relying on your general experience
23 with IVR systems, have you done anything else to
24 verify the accuracy of Time Warner Cable's IVR
25 records?

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1 A. No, but it would be -- I have no experience,
2 ever, in the dozens of systems I've analyzed and all
3 the analysis I've done over ten or 11 years on
4 systems like this, that these records are not
5 accurate. I guess someone can make that contention,
6 but there is no evidence to that effect, and I'll
7 stand by my opinions, that they are accurate.

8 Q. Are you aware of situations where IVR
9 platforms -- strike that.

10 Are you aware of situations where the call
11 progress analysis function of an IVR platform gets
12 confused about whether something is a live voice or a
13 voicemail?

14 A. No, but that doesn't mean it can't happen,
15 and certainly it would be a software bug where
16 something like that would occur. But that would
17 occur over a period of years. Somebody would have
18 discovered that bug and fixed it or done something.
19 So over a period of many years and many calls were
20 made, it's hard to fathom that the system is working
21 improperly.

22 Q. You don't know, sitting here today, how
23 frequently Time Warner Cable's IVR records have
24 dispositions that have been miscategorized as a
25 voicemail when they were actually live voices, do

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1 you?

2 A. No, but if that did happen, there are still
3 calls initiated with a prerecorded voice, regardless
4 of whether they were answered by a live voice or a
5 voicemail, and those are the ones we're counting.
6 We're counting both of those. So even if they're
7 confused, we're going to come up with the same total
8 number.

9 Q. And, likewise, sitting here today, you don't
10 know how frequently it happens in Time Warner Cable's
11 IVR logs, where something is recorded as a live voice
12 when it was actually an answering machine, do you?

13 A. That's right. But, again, let's assume they
14 were all live voice or all answering machine,
15 regardless of how that's all programmed to respond,
16 in either case the call was initiated with a
17 prerecorded voice and left a disposition based on an
18 IVR being used. So even if the disposition code was
19 wrong, it's basically saying an IVR was used and we
20 used a prerecorded voice, please record everything as
21 a live voice or record everything as an answering
22 machine. The count will still be the same based on
23 those calls to wrong numbers.

24 Q. So your testimony is it doesn't matter
25 whether something was really a live voice call or an

1 correct?

2 A. Yes, I do.

3 Q. And is this the reason, this paragraph 22,
4 the reason why your methodology does not rely on any
5 subpoenas to the cell phone carriers?

6 A. That's right. And not just in a case like
7 this, but in general. That is an arduous task to --
8 there's about a hundred carriers, mobile carriers in
9 the U.S., not including NBOs. We're talking about
10 little rural carriers that have one cell site and
11 things like that. To send a list of tens of
12 thousands or hundreds of thousands of telephone
13 numbers to each one and have them perform an analysis
14 of the subscriber data, is not feasible.

15 So the other thing is, if you don't do that,
16 right, because again, even if you get subscription
17 data direct from the carrier, for a family plan that
18 has five phones on it, you only get one name. So you
19 don't get the customer user of the phone number,
20 right, which might be in a family plan, but not
21 recorded from a business perspective from the
22 carrier.

23 Q. And that's because it's your understanding
24 that, in the case of family plans, that the
25 subscriber of the entire family plan is typically the

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1 name associated with --

2 A. In some cases there are some carriers that
3 request the name of the user, even in a family plan,
4 so it's not that business relationship but they want
5 to record that.

6 And that's also true also of a lot of
7 prepaid carriers today, because prepaid phones, they
8 can be used as burner phones. U.S. hasn't done it
9 yet, but many countries have instituted for prepaying
10 phones, that people come in and provide
11 identification or information or they're going to cut
12 off their service, so that it can't be used
13 illegally. So it's more typical today to see prepaid
14 carriers record information about the person buying
15 the phone.

16 Q. But some don't require it; correct?

17 A. Some don't require it.

18 Q. So it's your view that using the Lexus Nexus
19 product that Mr. Weir was using, would provide more
20 accurate results than subpoenaing the carrier?

21 A. Yes. And that's especially because -- even
22 -- let's say I have a prepaid phone number I've had
23 for years and the carrier I'm using has no idea who I
24 am, I just top it off every month in some amount of
25 money. But if I applied for credit or get a bank

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Jane V. Efaw, CCR No. 601, do hereby certify:

That I reported the taking of the deposition of
the witness, RANDALL SNYDER, at the time and place
aforesaid;

That prior to being examined, the witness was by
me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes
into typewriting and that the typewritten transcript
of said deposition is a complete, true and accurate
transcription of said shorthand notes taken down at
said time, and that a request has been made to review
the transcript.

I further certify that I am not a relative or
employee of counsel of any party involved in said
action, nor a relative or employee of the parties
involved in said action, nor a person financially
interested in the action.

Dated at Las Vegas, Nevada, this 19th day of
December 2018.


Jane V. Efaw, CCR #601

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